



07 NOV 2000

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In re Application of	:	
DANZIGER, et al.	:	
U.S. Application No. 09/403,472	:	DECISION ON PETITION
PCT No.: PCT/IL98/00204	:	UNDER 37 CFR 1.47(a)
Int. Filing Date: 29 April 1998	:	
Priority Date: 01 May 1997	:	
For: OPTICAL RESONATORS WITH	:	
DISCONTINUOUS PHASE ELEMENTS	:	

This decision is in response to the "RENEWED PETITION UNDER 37 CFR 1.47(a)" filed 23 August 2000. In a decision dated 23 May 2000, the "PETITION UNDER 37 CFR 1.47(a)" filed 08 February 2000 was dismissed because applicant did not provide adequate proof that the inventor, Yachay Danziger, refused to execute the application or could not be reached after diligent effort and applicant did not provide a statement of the last known address of the non-signing inventor.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. The 23 May 2000 decision indicated that petitioner has satisfied items (1) and (4) above. Item (3) is now been satisfied.

Regarding item (2) above, Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

"Where a refusal of the inventor to sign the application papers is alleged, the circumstances of its refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which the conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The petition does not include sufficient factual proof that Mr. Dazinger has refused to join the present application. As stated in the declaration of Galet Gamliel, "[o]n July 12, 2000 I deposited, postage prepaid, in the official Israeli postal system, the enclosed July 12, 2000 covering letter, Declaration and Power of Attorney for Patent Applications and a copy of the U.S. application filed under no. 09/403,472..." However, the declaration does not include proof that the papers mailed on July 12, 2000 were received by Mr. Danziger.

Regarding item (3) above, applicant has provided a clear statement of the last known address of the non-signing inventor.

CONCLUSION

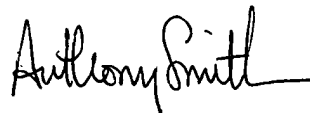
The renewed petition under 37 CFR 1.47(a) is **DISMISSED**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extension of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention to the PCT Legal Office.



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